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8 UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

9 ELVIS RUIZ, FRANCISCO JAVIER
10 CASTRO and EDUARDO MARTINEZ,

11 Plaintiffs,

12 vs.

13 MAX FERNANDEZ and ANN
FERNANDEZ, a marital community;
14 and WESTERN RANGE
ASSOCIATION, a foreign nonprofit
15 organization,

16 Defendants.

No. CV-11-3088-RMP

PLAINTIFFS' MEMORANDUM
IN SUPPORT OF MOTION TO
COMPEL DISCOVERY
RESPONSES

17
18 **II. ARGUMENT**

19 **A. Plaintiffs are Entitled to an Order Compelling Discovery and Sanctions**
Based on Max Fernandez' Failure to Respond.

20 If a party fails to answer an interrogatory submitted under Fed. R. Civ. P.

1 33 or fails to respond to a request for production under Fed. R. Civ. P. 34, the party
2 requesting the discovery may apply for an order compelling discovery and for
3 appropriate sanctions. Fed. R. Civ. P. 37(a) & (d), 33(b)(5) & 34(b).

4 The movant is required to make a good faith effort to confer with the
5 party failing to make the discovery in an effort to secure the information without
6 court action. Fed. R. Civ. P. 37(a)(2)(B) & (d). The court must require the party
7 failing to participate in discovery or the party's attorney to pay the resulting
8 expenses, including a reasonable attorney's fee. Fed. R. Civ. P. 37(a)(4) (A) &(d);
9 *Hyde & Drath*, 24 F.3d 1162, 1170 (9th Cir. 1994); *Wright & Miller, Federal*
10 *Practice and Procedure*, Vol. 12B at 693. The court must award the expenses
11 unless the court finds that the failure was substantially justified or that other
12 circumstances make an award of expenses unjust. Fed. R. Civ. P. 37(a)(4) & (d);
13 *Wright & Miller*, Vol. 12B at 693.

14 Plaintiffs have made several attempts to confer with Defendant Fernandez'
15 attorney regarding discovery. *Besso Declaration*, ¶4-6. After conferring and/or
16 attempting to confer, Defendant Fernandez has still not provided any responses to
17 the First Set of Interrogatories and Request for Production which were served on
18 July 10, 2012. Defendants' failure to produce discovery on a timely matter has
19 interfered with plaintiffs' ability to prepare their case, especially in light of the
20
21

1 discovery cut-off of October 12, 2012 and has cost Plaintiffs time in attempting to
2 resolve these issues.

3 III: CONCLUSION

4 Based on the forgoing authority, and the supporting declarations of counsel,
5 this Court should grant Plaintiffs' Motion to Compel Discovery and enter an order
6 compelling Defendant Max Fernandez to respond to Plaintiffs' First Set of
7 Interrogatories and Requests for Production. In addition, Defendant Fernandez and
8 his attorney should be ordered to pay Plaintiffs' reasonable costs and fees for
9 bringing this motion.

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11 Dated this 13th day of September, 2012.

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13 Presented by:

14 NORTHWEST JUSTICE PROJECT

15
16 /s/ Michele Besso
17 Michele Besso, WSBA #17423
18 Attorney for Plaintiffs

19 FARMWORKER JUSTICE

20 By: /s/ Weeun Wang
21 Weeun Wang

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of September, 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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